IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2010-CA-00042-COA

MARK FAILS AND LAURA FAILS **APPELLANTS**

v.

JEFFERSON DAVIS COUNTY PUBLIC SCHOOL BOARD **APPELLEE**

DATE OF JUDGMENT:	12/04/2009
TRIAL JUDGE:	HON. MICHAEL R. EUBANKS
COURT FROM WHICH APPEALED:	JEFFERSON DAVIS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANTS:	ALEXANDER IGNATIEV
ATTORNEY FOR APPELLEE:	REGINALD ERVIN JONES
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES
TRIAL COURT DISPOSITION:	AFFIRMED THE DECISION OF THE CONSERVATOR OF THE JEFFERSON DAVIS COUNTY PUBLIC SCHOOL DISTRICT TO REVOKE ALL INTER-DISTRICT TRANSFERS
DISPOSITION:	AFFIRMED: 05/24/2011
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

GRIFFIS, P.J., FOR THE COURT:

¶1. This is an appeal of a school-board decision that revoked the transfer of Courtney Fails. Mark and Laura Fails assert three issues on appeal. First, the conservator does not have the authority to prevent the district's school board from voting on a matter. Second, the school board may not lawfully revoke a student's inter-district transfer after it previously approved the transfer. Third, the school board may not adopt a blanket policy against inter-

district transfers. We find no error and affirm.

FACTS

¶2. Mark and Laura are the parents of Courtney. They reside in the Jefferson Davis County Public School District ("the District"). In 2003, Mark and Laura requested and obtained a transfer for Courtney to attend school in Sumrall, Mississippi, located in the Lamar County Public School District. This transfer allowed Courtney to attend the school in Sumrall even though she did not reside within that district.

¶3. In May 2007, the Governor declared a state of emergency in the District. Thereafter, the State Board of Education appointed Glenn Swan to the position of interim conservator for the District.

¶4. On August 13, 2007, the Jefferson Davis County Public School Board ("the Board") adopted a "New Student Transfer Policy":

> It shall be the policy of the [the District] that all students who live in said district must attend school in the Prentiss School District or the Bassfield School District. No student shall be allowed to . . . attend another school in a different district when the parents or legal guardian reside at a legal residen[ce] in [the District].

¶5. In the summer of 2008, notice was published in a local newspaper that informed all parents within the District of the new transfer policy. The notice stated that all prior transfers were revoked and that no transfers would be allowed in the future. The effect of this policy was that Courtney would have to leave the Sumrall school and return to the District's schools.

¶6. On October 13, 2008, Mark appeared before the Board at its regularly scheduled

meeting. He argued to the Board that the intent of the new policy was not to revoke existing transfers but merely to prohibit future transfers. He asked the Board to clarify the meaning of the new policy. Swan invoked his authority as conservator and refused to allow the Board to vote on the matter. Swan decided that the policy did in fact revoke existing transfers.

¶7. Mark and Laura appealed this decision to the Circuit Court of Jefferson Davis County, which affirmed Swan's decision and upheld the revocation of Courtney's transfer. Their appeal has now been deflected to this Court for review.

STANDARD OF REVIEW

¶8. An appeal from an administrative agency is limited. *Mainstream Sav. & Loan Ass'n v. Washington Fed. Sav & Loan Ass'n*, 325 So. 2d 902, 903 (Miss. 1976). In the review of a decision of an administrative agency, we will determine whether the order of the administrative agency: "(1) was unsupported by substantial evidence[,] (2) was arbitrary and capricious[,] (3) was beyond the power of the administrative agency to make[,] or (4) violated some statutory or constitutional right of the complaining party." *Id.* However, in *ABC Manufacturing Corp. v. Doyle*, 749 So. 2d 43, 45 (¶10) (Miss. 1999), the Mississippi Supreme Court held, "[g]enerally, an administrative agency is accorded deference, but when the agency has misapprehended a controlling legal principle, no deference is due, and our review is de novo."

ANALYSIS

1. Did the conservator have the authority to prevent the Board from a vote on the issue?

¶9. The first argument on appeal is that Swan did not have the authority to prevent the Board from voting to clarify the meaning of the "New Student Transfer Policy."

¶10. Swan's authority as the conservator was broad. The conservator, in essence, becomes the Board. Mississippi Code Annotated section 37-17-6(14)(a) (Supp. 2010) provides:

> Whenever the Governor declares a state of emergency in a school district in response to a request made under subsection (11) of this section, the State Board of Education, in its discretion, may assign an interim conservator to the school district, . . . *who will be responsible for the administration, management and operation of the school district, including, but not limited to*, the following activities:
>
> > (i) Approving or disapproving all financial obligations of the district, including, but not limited to, the employment, termination, nonrenewal and reassignment of all licensed and nonlicensed personnel, contractual agreements and purchase orders, and approving or disapproving all claim dockets and the issuance of checks; in approving or disapproving employment contracts of superintendents, assistant superintendents or principals, the interim conservator shall not be required to comply with the time limitations prescribed in Sections 37-9-15 and 37-9-105;
> >
> > (ii) Supervising the day-to-day activities of the district's staff, including reassigning the duties and responsibilities of personnel in a manner which, in the determination of the conservator, will best suit the needs of the district;
> >
> > (iii) Reviewing the district's total financial obligations and operations and making recommendations to the district for cost savings, including, but not limited to, reassigning the duties and responsibilities of staff;
> >
> > (iv) Attending all meetings of the district's school board and administrative staff;
> >
> > (v) Approving or disapproving all athletic, band and other extracurricular activities and any matters related to those

> activities;
>
> (vi) Maintaining a detailed account of recommendations made to the district and actions taken in response to those recommendations;
>
> (vii) Reporting periodically to the State Board of Education on the progress or lack of progress being made in the district to improve the district's impairments during the state of emergency; and
>
> (viii) Appointing a parent advisory committee, comprised of parents of students in the school district that may make recommendations to the conservator concerning the administration, management and operation of the school district.

(Emphasis added).

¶11. Mark and Laura correctly point out that the statute does not specifically provide Swan with the power to prevent the Board from voting to clarify the transfer policy. Nevertheless, the statute expressly grants the conservator authority over "the administration, management and operation of the school district." *Id.* The statute also indicates that the specific powers granted under the statute are not exhaustive.

¶12. Because Mississippi case law is silent on this issue, this Court must look to the plain language of the statute and give the words "their common and ordinary acceptation and meaning[.]" Miss. Code Ann. § 1-3-65 (Rev. 2005). The statute uses capacious language to describe the role of the conservator. Control over "administration, management and operation" is commonly understood to mean a very high degree of authority. Based on the statute's plain language and the general powers conveyed by this language, we must conclude that Swan operated within his statutory powers when he refused to allow the Board

to vote on a matter dealing with the "administration, management and operation" of the District. Accordingly, we find that this issue is without merit.

2. Did the Board have the authority to revoke an existing transfer?

¶13. Mark and Laura next argue that the Board did not have the authority to revoke Courtney's transfer. They contend that once an inter-district transfer has been approved it is permanent and irrevocable.

¶14. Mississippi Code Annotated section 37-15-29(1) (Supp. 2010) provides:

> [N]o minor child may enroll in or attend any school except in the school district of his residence, unless such child be lawfully transferred from the school district of his residence to a school in another school district in accord with the statutes of this state now in effect or which may be hereafter enacted.

Inter-district transfers are governed by Mississippi Code Annotated section 37-15-31 (Rev. 2007), which provides:

> (1)(a) . . . [I]ndividual students living in one school district . . . may be legally transferred to another school district, by the mutual consent of the school boards of all school districts concerned[.]

Thus, both the transferor and the transferee school boards must consent to the transfer. The statute further provides that if both school boards approve the transfer "such decision shall be final." Miss. Code Ann. § 37-15-31(1)(b). And if either school board rejects the transfer that decision is also "final." *Id.*[1]

¶15. Mark and Laura claim that when their initial transfer request was approved, in 2003,

---

[1] The statute also allows for inter-district transfers in a few other limited situations that are not applicable to this case. *See* Miss. Code Ann. § 37-15-31(2)-(5).

that decision became final, in the sense that it was effective in perpetuity and could not be revoked. In contrast, the Board argues that, since the statute requires it to consent to the transfer, it could have withdrawn its consent at any time and thereby revoked Courtney's transfer.

¶16. Neither party cites any legal authority directly on point. We are convinced, after reviewing prior versions of the statute, that "final" does not mean that the transfer could never be revoked.

¶17. Under section 6248-07 of the Mississippi Code of 1942, an inter-district transfer required the consent of the boards of trustees and the county boards of education of both the transferor and transferee school districts. If either board of trustees denied the transfer, the board of trustees' decision could be appealed to the county board of education. *Id.* The statute also provided for appeals to the State Educational Finance Commission. *Id.*

¶18. The statute underwent several revisions. By 1987, the statute, as it does today, required the consent of the school boards of both the transferor and transferee school districts. 1987 Miss. Laws ch. 307, § 16. The statute provided that if either school board denied the transfer, an appeal could be taken to the State Board of Education. *Id.*

¶19. In 1988, the Legislature passed "An Act to Amend Section 37-15-31, Mississippi Code of 1972, to Delete the Provision for an Appeal to The State Department Of Education from Decisions of Local School Boards Regarding Transfer Students." 1988 Miss. Laws ch. 466, § 1. The statute was revised to state that if either school board denied the transfer, that decision would be "final." *Id.* By 1991, the statute also provided that if both school boards

approved the transfer, that decision would be "final." 1991 Miss. Laws ch. 349, § 2. Those provisions of the statute have remained substantially unchanged up to the present day.

¶20. In this context, we conclude that the word "final" simply means that there is no administrative appeal to the State Department of Education. While older versions of the statute allowed for various administrative appeals, the current version does not. We find no authority that supports a conclusion that "final" means the transfer is permanent and irrevocable.

¶21. We now turn to the question of whether the Board could withdraw its consent to the transfer. Again, there is no legal authority directly on point. Likewise, there is no statutory language to suggest that once consent has been given for a transfer it cannot be withdrawn. The Mississippi Supreme Court has noted that student "assignments are not perpetual." *Hinze v. Winston County Bd. of Educ.*, 233 Miss. 867, 875, 103 So. 2d 353, 357 (1958).

¶22. Swan sought and obtained an Attorney General opinion. The Attorney General's opinion stated:

> Attorney General Jim Hood is in receipt of your opinion request as the Conservator for the Jefferson Davis County School District and has assigned it to me for research and reply.
>
> Issue
>
> Whether the release of a student pursuant to Section 37-15-31 of the Mississippi Code to attend school in a district other than in the district in which he/she resides is permanent at the time of the release or is the student required to request the release on an annual basis?
>
> Response

The release of the student to attend school in another school district is not permanent. The transfer is effective until either party revokes its consent.

Background

Clarification is needed on the release of a student to attend a school in another district other than in the district he/she resides. The school district has had a number of students released in past years; however, the district has a "no release" policy at the present time.

Applicable Law and Discussion

Section 37-15-31(1) (a) of the Mississippi Code provides that upon the petition in writing of a parent or guardian resident of the school district of an individual student filed or lodged with the president or secretary of the school board of a school district in which the pupil has been enrolled or is qualified to be enrolled as a student, individual students living in one school district may be legally transferred to another school district, by the mutual consent of the school boards of all school districts concerned, which consent must be given in writing and spread upon the minutes of such boards.

This office has previously opined on the duration of a transfer of a student. As there is no specific time limitation set forth in Section 37-15-31, the transfer of a student is effective until the school board of either school district, or the county board of education if applicable, revokes its consent. MS AG Op., Swanson (February 16, 2001). However, it is important to note that in the absence of express statutory authority, a school board cannot enter into a transfer contract with another school board for a period of time that would deprive a subsequent board of its rights and powers. Any such contract would be voidable at the election of the subsequent board. MS AG Op., Swanson (February 16, 2001), *quoting Humble Oil & Refining Co., et al v. State et al*, 41 So. 2d 26 (1949). *See also* MS AG Op., Boleware (September 10, 2008).

Conclusion

We are of the opinion that the transfer of a student to another school district pursuant to Section 37-15-31 of the Mississippi Code can be revoked by the school board of either school district. Additionally, a school board cannot enter into a transfer contract that would deprive a subsequent board of its rights and powers.

Miss. Att'y Gen. Op., 2008-00524, 2008 WL 4825783, *Swan* (Oct. 3, 2008).

¶23. We agree with the Attorney General's opinion. Therefore, we hold that a school board may withdraw its consent to an inter-district transfer and thereby revoke the transfer. Accordingly, this issue is without merit.

3. Could the Board adopt a blanket policy against transfers?

¶24. Mark and Laura also attack the "New Student Transfer Policy." They argue that the Board could not adopt a blanket policy against inter-district transfers. They argue that individual transfer requests must be considered on a case-by-case basis and that, when making their decisions, school boards must consider certain factors enumerated in Mississippi Code Annotated section 37-15-15 (Rev. 2007).

¶25. However, section 37-15-15 requires school boards to consider certain factors when assigning students to a particular school or attendance center within a district. It does not apply to inter-district transfers. *Hinze*, 233 Miss. at 874, 103 So. 2d at 356.

¶26. Section 37-15-31 grants school districts absolute discretion to grant or deny inter-district transfers, with some exceptions that are not applicable to this case. It follows that districts may adopt uniform policies against transfers. It would be a difference in form only if a district denied each individual transfer request, as opposed to announcing preemptively that there will be no transfers. This issue has no merit.

¶27. **THE JUDGMENT OF THE JEFFERSON DAVIS COUNTY CIRCUIT COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANTS.**

LEE, C.J., IRVING, P.J., MYERS, ISHEE, ROBERTS AND MAXWELL, JJ.,

CONCUR. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY BARNES, J. RUSSELL, J., NOT PARTICIPATING.

CARLTON, J., DISSENTING:

¶28. I respectfully dissent from the majority. I would reverse the trial court's affirmance of the decision of the interim conservator of the Jefferson Davis County Public School District ("the District"), and would remand Mark and Laura Fails's request for a school transfer for their daughter, Courtney, back to the District for disposition by the proper authority, the State Board of Education.

¶29. A review of the record shows that after the Governor declared a state of emergency in the District, the State Board of Education appointed an interim conservator for the District. The record reflects that the interim conservator then implemented a new student transfer policy, that had been previously adopted by the Jefferson Davis County Public School Board ("the Board"), which revoked all prior school transfers, including Courtney's previously granted transfer to the Lamar County Public School District, and prevented any future transfers from being granted. The record further shows that Mark appeared before the Board and requested a reconsideration of the denial of Courtney's transfer, but the interim conservator refused to allow the Board to consider his request. The record indicates that, practically speaking, the interim conservator's decision, which denied consideration of Courtney's school transfer request, forced Courtney to attend a school in a school district operating under a state of emergency.

¶30. Mississippi Code Annotated sections 37-17-6(11)(b) and (c) (Supp. 2010) speak

directly to the authority of the State Board of Education after it has been determined that an emergency situation exists in a school district that is detrimental to the interests of the children attending school in the district. Sections 37-17-6(11)(b) and (c) provide the following in pertinent part:

> (b) If the State Board of Education and the Commission on School Accreditation determine that an extreme emergency situation exists in a school district that jeopardizes the safety, security or educational interests of the children enrolled in the schools in that district and that emergency situation is believed to be related to a serious violation or violations of accreditation standards or state or federal law, or when a school district meets the State Board of Education's definition of a failing school district for two (2) consecutive full school years, the State Board of Education may request the Governor to declare a state of emergency in that school district. For purposes of this paragraph, the declarations of a state of emergency shall not be limited to those instances when a school district's impairments are related to a lack of financial resources, but also shall include serious failure to meet minimum academic standards, as evidenced by a continued pattern of poor student performance.
>
> (c) Whenever the Governor declares a state of emergency in a school district in response to a request made under paragraph (a) or (b) of this subsection, the *State Board of Education* may take one or more of the following actions:
>
> . . . .
>
> > (iii) Assign an interim conservator, or in its discretion, contract with a private entity with experience in the academic, finance and other operational functions of schools and school districts, who will have those powers and duties prescribed in subsection (14) of this section;
> >
> > (iv) *Grant transfers to students who attend this school district so that they may attend other accredited schools or districts in a manner that is not in violation of state or federal law*[.]

(Emphasis added).

¶31. While the trial judge relies upon Mississippi Code Annotated sections 37-17-6(14)(a)

(Supp. 2010) and 37-15-31 (Rev. 2007) to support his finding that substantial evidence existed to support the interim conservator's decision to prohibit a vote on the Fails's request for a school transfer, I find that these statutory provisions are inapplicable to the present case. These statutes provide no authority to a district's conservator to deny a student's request for a school transfer out of a failing school district to an accredited school district, and as stated previously herein, section 37-17-6(11)(c)(iv) specifically places that authority with the State Board of Education.[2] Furthermore, I find that the statutory provisions cited by the majority[3] may be waived by the State Board of Education when the Governor declares a state of emergency in the school district in which the child attends, and the State Board of Education may grant the request for a school transfer so that the child can attend a school in an accredited district.[4] *See* section 37-17-6(11)(c)(iv) (authorizing the State Board of Education

---

[2] I pause to note that the Fifth Circuit has held that, when applying fundamental principles of statutory construction, specific statutory provisions control over general provisions absent clear legislative intent to the contrary. *See Carmona v. Andrews,* 357 F.3d 535, 538 (5th Cir. 2004); *Ehm v. Nat'l R.R. Passenger Corp*., 732 F.2d 1250, 1253 (5th Cir. 1984).

[3] Miss. Code Ann. §§ 37-15-29 (Supp. 2010) and 37-15-31(Rev. 2007).

[4] I recognize that the statutory provisions cited by the majority do apply to school districts that have not been declared by the Governor to exist in a state of emergency. However, I also recognize that the Mississippi Supreme Court has held in cases pertaining to school transfers in such situations, that a valid reason is required to support a denial of a school transfer in such situations, otherwise the decision is arbitrary and capricious and lacks substantial evidence. *See Pascagoula Mun. Sch. Dist. v. Barton*, 776 So. 2d 683, 688 (¶16) (Miss. 2001) (finding that a proper reason was required to support the denial of a student's request to be transferred to her sibling's school, even though no statutory provisions or school transfer policy existed guaranteeing sibling assignments, and no state of emergency had been declared in the school district).

to grant school transfers when the Governor declares a state of emergency in a school district).

¶32. I recognize that this Court applies the same standard of review that the chancery and circuit courts are bound by when considering agency actions. *Pub. Employees' Ret. Sys. v. Marquez,* 774 So. 2d 421, 429 (¶32) (Miss. 2000) (citing *Miss. Comm'n on Envtl. Quality v. Chickasaw County Bd. of Supervisors*, 621 So. 2d 1211, 1215 (Miss. 1993)). A circuit court sitting as an appellate court reviews a decision of a county school board to determine whether or not the action of the school board was arbitrary and capricious, unreasonable, or constituted an abuse of discretion. *Pascagoula*, 776 So. 2d at 684-85 (¶5) (citations omitted). *See* Uniform Rule of Circuit and County Court 5.03. In applying this standard of review to the case at hand, I find that the interim conservator failed to comply with his statutory authority during a declared state of emergency, *see* sections 37-17-6(11)(b) and (c)(iv); therefore, his actions were arbitrary and capricious, and constituted an abuse of discretion. *See Pascagoula,* 776 So. 2d at 685 (¶5). I further find that the trial judge in the present case misapprehended the law by basing his finding on statutory provisions that are inapplicable to the present case, and by failing to apply the statutory provisions that specifically pertain to the State Board of Education's authority to grant a request for a transfer from a school district operating under a state of emergency to an accredited school district. As such, I would reverse the trial court and remand this case to the District, or to the interim conservator, if the District is still operating under a state of emergency, for appropriate consideration and submission to the State Board of Education for a decision in accordance

with section 37-17-6(11)(c)(iv).

BARNES, J., JOINS THIS OPINION.